

AMENDED IN ASSEMBLY MAY 3, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2630

Introduced by Assembly Members Emmerson and Cook
(Coauthors: Assembly Members Gilmore, Logue, Miller, Nestande,
and Tran)
(Coauthor: Senator Dutton)

February 19, 2010

An act to add *and repeal* Section 17053.79 ~~to~~ of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2630, as amended, Emmerson. Income tax: credits: ~~full-time~~ *full-time* employees: hires.

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law.

~~This bill would allow a credit of \$3,000 for each net increase in qualified full-time employees hired during the taxable year by a qualified employer until the state unemployment rate is 5.5% or lower for 4 consecutive calendar quarters, as prescribed, for taxable years beginning on or after January 1, 2011, authorize a credit in an amount equal to \$3,000, prorated as provided, for each full-time employee hired during the taxable year by a qualified employer, as defined.~~

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) California is facing one of the most severe economic*
4 *recessions in recent history.*

5 *(b) Small businesses have been hit particularly hard in this*
6 *economy, which has caused high levels of unemployment*
7 *throughout the state.*

8 *(c) As small businesses are the real force behind job creation,*
9 *it is necessary for California to assist them in their effort to hire*
10 *new employees and stimulate the economy.*

11 *SEC. 2. Section 17053.79 is added to the Revenue and Taxation*
12 *Code, to read:*

13 *17053.79. (a) For each taxable year beginning on or after*
14 *January 1, 2011, there shall be allowed as a credit against the*
15 *“net tax,” as defined in Section 17039, three thousand dollars*
16 *(\$3,000) for each net increase in qualified full-time employees, as*
17 *specified in subdivision (c), hired during the taxable year by a*
18 *qualified employer.*

19 *(b) For purposes of this section:*

20 *(1) “Acquired” includes any gift, inheritance, transfer incident*
21 *to divorce, or any other transfer, whether or not for consideration.*

22 *(2) “Qualified full-time employee” means:*

23 *(A) A qualified employee who was paid qualified wages by the*
24 *qualified employer for services of not less than an average of 35*
25 *hours per week.*

26 *(B) A qualified employee who was a salaried employee and was*
27 *paid compensation during the taxable year for full-time*
28 *employment, within the meaning of Section 515 of the Labor Code,*
29 *by the qualified employer.*

30 *(3) A “qualified employee” shall not include any of the*
31 *following:*

32 *(A) An employee certified as a qualified employee in an*
33 *enterprise zone designated in accordance with Chapter 12.8*
34 *(commencing with Section 7070) of Division 7 of Title 1 of the*
35 *Government Code.*

36 *(B) An employee certified as a qualified disadvantaged*
37 *individual in a manufacturing enhancement area designated in*
38 *accordance with Section 7073.8 of the Government Code.*

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included in calculating any other credit allowed under this part.

(4) “Qualified employer” means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 50 or fewer employees.

(5) “Qualified wages” means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

(6) “Annual full-time equivalent” means either of the following:

(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.

1 (d) *In the case where the credit allowed by this section exceeds*
2 *the “net tax,” the excess may be carried over to reduce the “net*
3 *tax” in the following year, and succeeding seven years if necessary,*
4 *until the credit is exhausted.*

5 (e) (1) *Any deduction otherwise allowed under this part for*
6 *qualified wages shall not be reduced by the amount of the credit*
7 *allowed under this section.*

8 (2) *The credit under this section shall be in lieu of any other*
9 *credit allowed by this part for each net increase in qualified*
10 *full-time employees during the taxable year.*

11 (f) *For purposes of this section:*

12 (1) *All employees of the trades or businesses that are treated*
13 *as related under either Section 267, 318, or 707 of the Internal*
14 *Revenue Code shall be treated as employed by a single taxpayer.*

15 (2) *In determining whether the taxpayer has first commenced*
16 *doing business in this state during the taxable year, the provisions*
17 *of subdivision (f) of Section 17276, without application of*
18 *paragraph (7) of that subdivision, shall apply.*

19 (g) (1) (A) *A credit under this section shall be allowed only*
20 *for credits claimed on timely filed original returns received by the*
21 *Franchise Tax Board on or before the cut-off date established by*
22 *the Franchise Tax Board.*

23 (B) *For purposes of this paragraph, the cut-off date shall be*
24 *the last day of the calendar quarter within which the Franchise*
25 *Tax Board estimates it will have received timely filed original*
26 *returns claiming credits under this section that cumulatively total*
27 *fifty million dollars (\$50,000,000) for all taxable years.*

28 (2) *The date a return is received shall be determined by the*
29 *Franchise Tax Board.*

30 (3) (A) *The determinations of the Franchise Tax Board with*
31 *respect to the cut-off date, the date a return is received, and*
32 *whether a return has been timely filed for purposes of this*
33 *subdivision may not be reviewed in any administrative or judicial*
34 *proceeding.*

35 (B) *Any disallowance of a credit claimed due to a determination*
36 *under this subdivision, including the application of the limitation*
37 *specified in paragraph (1), shall be treated as a mathematical*
38 *error appearing on the return. Any amount of tax resulting from*
39 *such disallowance may be assessed by the Franchise Tax Board*
40 *in the same manner as provided by Section 19051.*

1 (4) *The Franchise Tax Board shall periodically provide notice*
2 *on its Web site with respect to the amount of credit under this*
3 *section claimed on timely filed original returns received by the*
4 *Franchise Tax Board.*

5 (h) (1) *The Franchise Tax Board may prescribe rules,*
6 *guidelines or procedures necessary or appropriate to carry out*
7 *the purposes of this section, including any guidelines regarding*
8 *the limitation on total credits allowable under this section and*
9 *guidelines necessary to avoid the application of paragraph (2) of*
10 *subdivision (f) through split-ups, shell corporations, partnerships,*
11 *tiered ownership structures, or otherwise.*

12 (2) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
13 *Division 3 of Title 2 of the Government Code does not apply to*
14 *any standard, criterion, procedure, determination, rule, notice, or*
15 *guideline established or issued by the Franchise Tax Board*
16 *pursuant to this section.*

17 (i) *This section shall remain in effect only until December 1 of*
18 *the calendar year after the year of the cut-off date, and as of that*
19 *December 1 is repealed.*

20 SEC. 3. *This act provides for a tax levy within the meaning of*
21 *Article IV of the Constitution and shall go into immediate effect.*

22 SECTION 1. ~~Section 17053.79 is added to the Revenue and~~
23 ~~Taxation Code, to read:~~

24 ~~17053.79. For each taxable year beginning on or after January~~
25 ~~1, 2010, and until the state unemployment rate is 5.5 percent or~~
26 ~~lower for four consecutive calendar quarters, there shall be allowed~~
27 ~~a credit against the "net tax," as defined in Section 17039, of three~~
28 ~~thousand dollars (\$3,000) for each net increase in qualified~~
29 ~~full-time employees hired during the taxable year by a qualified~~
30 ~~employer.~~

31 SEC. 2. ~~This act provides for a tax levy within the meaning of~~
32 ~~Article IV of the Constitution and shall go into immediate effect.~~